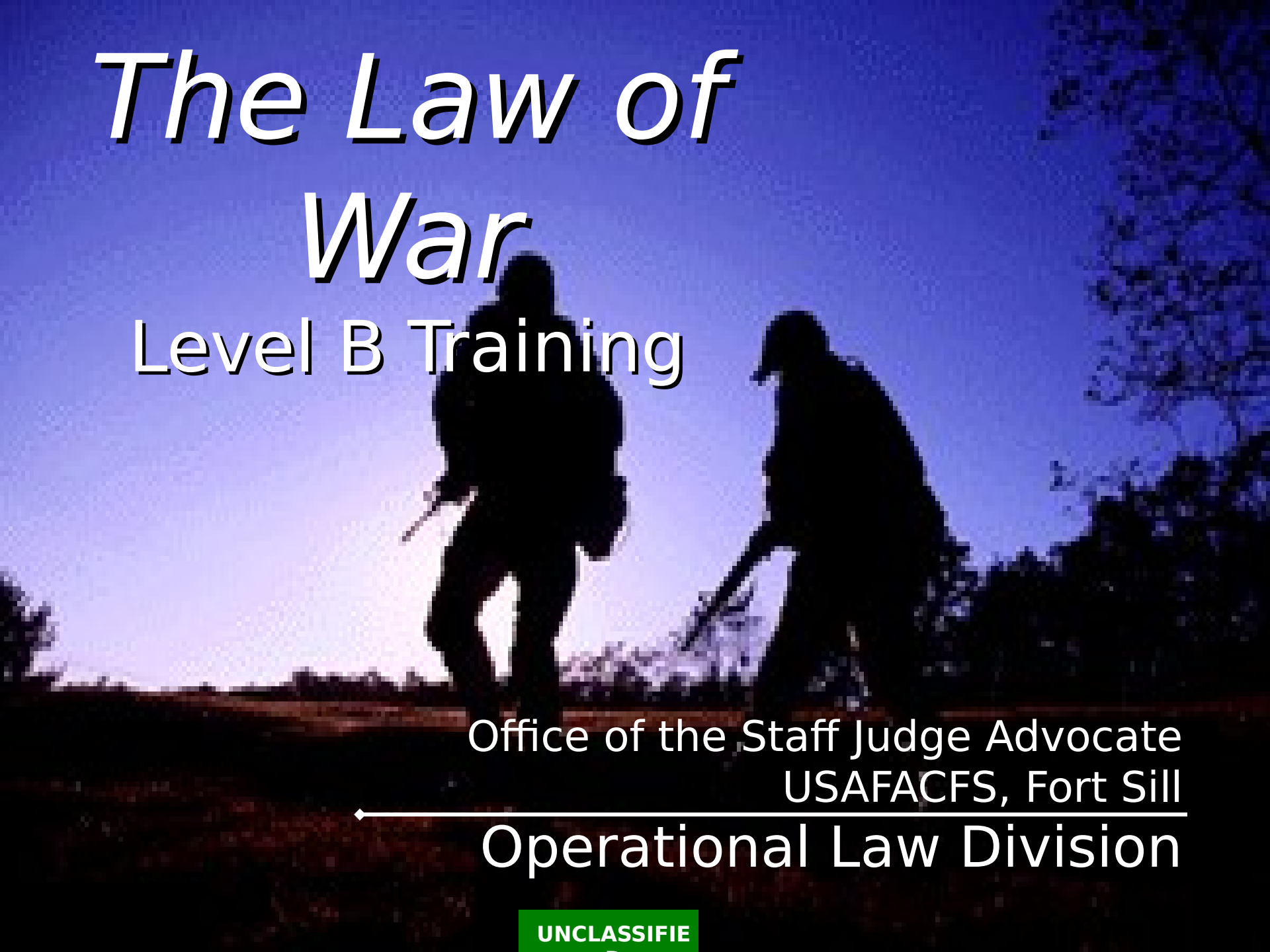

The Law of War

Level B Training

Office of the Staff Judge Advocate
USAFACFS, Fort Sill

Operational Law Division

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References

- AR 600-8-101, Para. 4-4 (Personnel Processing)
- AR 350-41, Chapter 14 (Training in Units, Law of War Training)
- FM 27-10 (The Law of Land Warfare)

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“America is a strong nation and honorable in the use of our strength. We exercise power without conquest, and we sacrifice for the liberty of strangers.”

“If war is forced upon us, we will fight in a just cause and by just means - sparing, in every way we can, the innocent. And if war is forced upon us, we will fight with the full force and might of the United States military - and

Why have this Class?

LT William Calley

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It is NOT a defense to say “I was just following orders”
or that an unlawful order was ambiguous.

Site of the My Lai Massacre, Mar. 1968, C Co, Task Force Baker, 11th Brigade, American Division.

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The Law of War: What's the Point?

- Protection from Unnecessary Suffering
- Safeguard Fundamental Human Rights
- Help Restore the Peace

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The Law of War
Where does it come from?

- **TREATIES OR CONVENTIONS** - Legal agreements between two or more nation states. *Examples:*
  - Hague Convention No. IV (1907)
    - Land Warfare
  - Geneva Conventions (1949)
    - Prisoners of War, Wounded and Sick, Civilians
  - Chemical Weapons Convention
- **CUSTOMARY INTERNATIONAL LAW** - Practices which have been firmly established by the conduct of nation-states over time.

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The Law of War
When does it apply?

- Declared War
- Undeclared War – *International* Armed Conflict
- MOOTW?

The U.S. will always apply LoW principles "however such conflicts are characterized." CJCSI 5810.01 (12 AUG 96)

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The Law of War:
Why is it important to follow?

- Ends the war quicker.
- Maintains discipline in high-stress combat environment.
- Violations are WAR CRIMES and violators can be prosecuted!
- Maintains public support and international alliances
- It’s the right thing to do!

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Four Basic Principles to The Law of War

- Military Necessity
- Humanity (avoid unnecessary suffering)
- Proportionality
- Distinction (or Discrimination between combatants/noncombatants)

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Military Necessity

Military objectives are limited to those objects:

- which by their nature, location, purpose, or use,
- make an effective contribution to military action
- and whose total or partial destruction, capture or neutralization, offers a definite military advantage
- in the circumstances ruling at the time.
- AND not forbidden by LoW…

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Military Necessity

Iraqi SCUD hits Dahran, Feb. 1991

Military necessity cannot be invoked as a defense to a LoW violation.

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Distinction:
Lawful Combatants

- Regular armed forces
- Irregular armed forces
  - Under responsible command
  - Fixed distinctive sign
  - Carry arms openly
  - Abide by the Law of War

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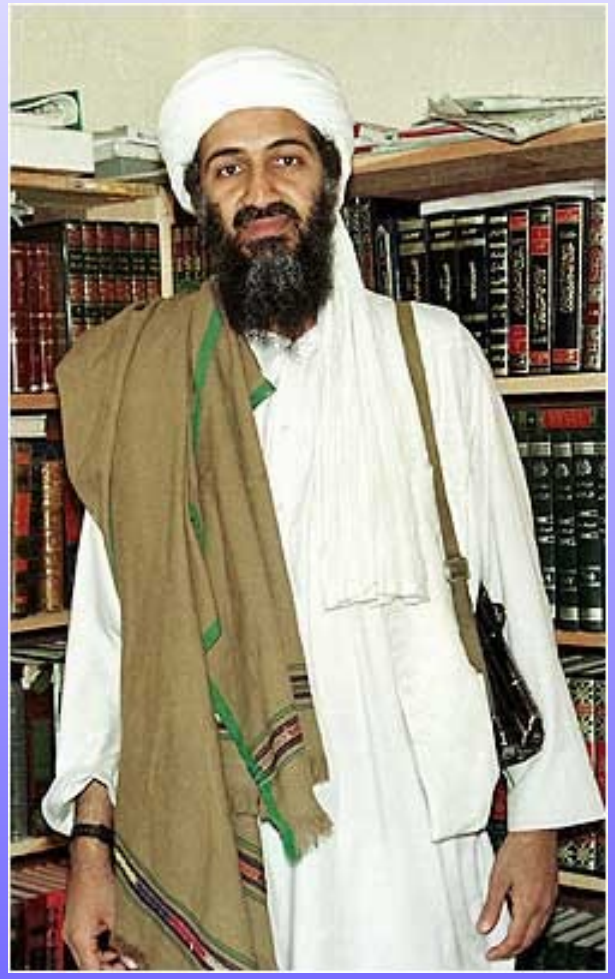
Distinction:
Unlawful Combatants



Do not enjoy special protections of POW status:

- Need not be returned home at end of hostilities
- May be prosecuted as criminals by captors

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Distinction: NONcombatants

- Civilians
- Wounded and sick soldiers
- Prisoners of War
- Medical Personnel and Chaplains

Anybody who's not "in the game!"

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A SOLDIER'S LAW OF WAR RESPONSIBILITIES

- **Know the four Law of War Categories**
  - **Forbidden targets, tactics and techniques**
  - **Rules regarding captured soldiers**
  - **Rules for protection of civilians and private pro**
  - **Your obligation to prevent and report Law of W violations**

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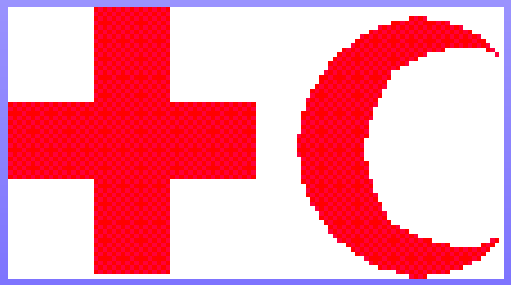
FORBIDDEN TARGETS

- **Non combatants (civilians, wounded and sick, EPWs, medics and chaplains)**
- **Personnel Parachuting from disabled a**
  Shooting Paratroopers is allo
- **Buildings and vehicles bearing medical service symbols**



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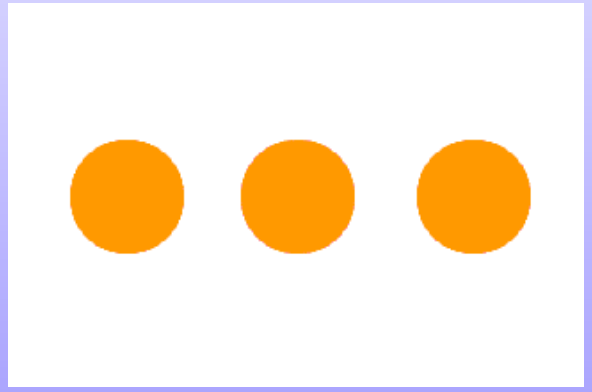
FORBIDDEN TARGETS

- Religious buildings
- Schools
- Historical monuments
- Sites of cultural significance



- Works or installations co ngerous forces (Dams, dikes, nuclear plants)

- Undefended towns, villages or buildings

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FORBIDDEN TACTICS

Treachery

- **Causing unnecessary destruction**
- **Faking surrender to conceal a surprise attack; feigning injury**
- **Attacking enemy soldiers who have lost the ability to fight (double tap)**
- **Wearing medical service symbols while not performing medical duties**
- **Establishing a defensive position in a church, hospital or other protected place**
- **Fighting the enemy while wearing either civilian clothes or the enemy uniform**

Ruses and Psyops are lawful

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PROHIBITED WEAPONS

- Poisoned weapons
- Weapons calculated to cause unnecessary suffering (exploding or hollow bullets, glass)
- Legitimate weapons used unreasonably
- Chemical Weapons
- Napalm, flame throwers, and white phosphorous are target dependent
- Mines (indiscriminate use prohibited)

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TARGETING CONSIDERATIONS SUMMARY

- Verify the target
- Use weapons which AVOID or MINIMIZE UNNECESSARY SUFFERING and COLLATERAL DAMAGE
- Do not attack if the incidental injury to civilians would be “excessive in relation to the concrete and direct military advantage anticipated. (Proportionality)

- (FM 27-10, para. 41)(Prot I Arts 51 & 57)

RIGHTS OF PRISONERS OF WAR

LAWFUL Combatants have the right to:

- Sanitary, protective housing and clothing
- Sufficient food to maintain good health
- Adequate medical care and necessary facilities to ensure proper hygiene
- Retain most personal property except arms, military equipment and documents
- Send and receive mail and receive packages containing foodstuffs, clothing, and or religious, educational, or recreational material
- Have a prisoners' representative

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TREATMENT OF CIVILIANS

- **Civilians are protected personnel**

- **Provide special protectio**
  for expectant mothers an
  orphaned children under
  (special medical and food
  provisions apply)

- **Provide civilians with as m**
food, clothing, shelter as t
mission will support

PRISONERS AT OMARSKA

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TREATMENT OF CIVILIANS

- Private weapons and personal financial resources may be t
  held (receipt must be issued)

- Do not take personal property or sentimental items

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COMMAND RESPONSIBILITY

- A commander will be held responsible if he has actual knowledge, or should have knowledge
- that persons subject to his command are
- about to commit, or have committed a war crime, and he fails to
- take reasonable steps to ensure compliance with the law or to punish Violators.

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UNLAWFUL ORDERS

- YOU HAVE A LEGAL DUTY AND MORAL OBLIGATION TO DISOBEY AN UNLAWFUL ORDER
- GET THE ORDER CLARIFIED
- CHALLENGE AN ILLEGAL ORDER
- GET THE ORDER CHANGED
- GET YOUR SUPERIOR TO CONFIRM THE ORDER
- DON'T OBEY, REPORT IT

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DEFENSE OF SUPERIOR ORDERS

- Did not know act was unlawful
- Could not have reasonably been expected to have know that the act was unlawful

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THE SOLDIERS RULES

- Soldiers Fight Only Enemy Combatants
- Do Not Harm Enemi Who Surrender
- Do Not Kill or Tortu Prisoners of War

Victory thru Justice!

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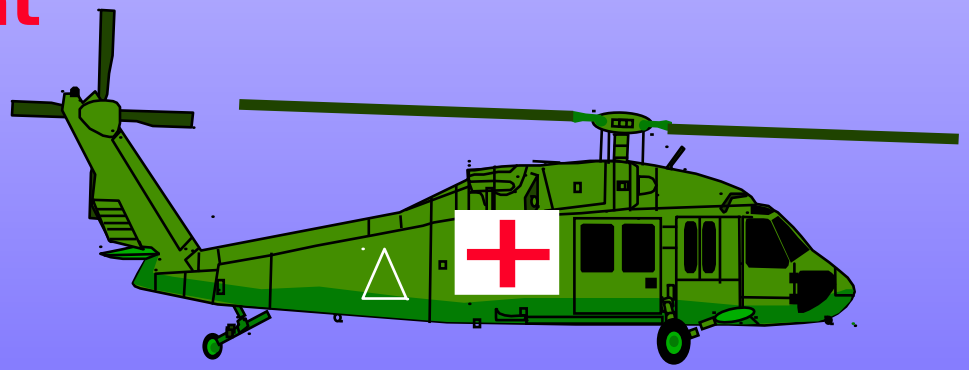
THE SOLDIERS RULES

- **Soldiers Collect and Care for the Wounded; Friend or Foe**

- **Soldiers Do Not Attack Medical Personnel or Equipment**



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THE SOLDIERS RULES

- **Soldiers Destroy No More Than the Mission Requires**

(Courtesy Dept. of Energy)

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THE SOLDIERS RULES

- Soldiers Treat All Civilians Humanely

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THE SOLDIERS RULES

- Soldiers Do Not Loot, Soldiers Respect Private Property and Possessions

- Report Any Violations of the Law of War

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CONCLUSION

QUESTIONS ?

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